

ADMINISTRATIVE PANEL DECISION

The NOCO Company v. Zhenhong Kang
Case No. D2022-1081

1. The Parties

The Complainant is The NOCO Company, United States of America (“United States”), represented by Jones Day, United States.

The Respondent is Zhenhong Kang, China.

2. The Domain Name and Registrar

The disputed domain name <nocoev.com> is registered with FastDomain, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 29, 2022. On March 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 30, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 2, 2022. The Respondent did not submit any formal response except that on April 1, 2022 the Respondent transmitted by email a communication to the Center. On May 3, 2022, the Center notified the Parties that it would proceed to the panel appointment process.

The Center appointed Marilena Comănescu as the sole panelist in this matter on May 11, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

Having reviewed the case file, the Panel notes that the Complainant asserts that “the website at the Disputed Domain Name purports to show a Chinese trademark certificate; however, this trademark registration (China Reg. No. 6375280) is of no moment as the same concerns only ‘Lighters [...]’”. The Panel further notes that the company listed on the website which the disputed domain name resolves to, 芜湖同驰机电有限公司 (NEW OCEAN TECHNOLOGY.CO., LTD.), owns a Chinese trademark registration No. 6375280. Accordingly, the Panel issued the Procedural Order No.1 on June 10, 2022, inviting the Respondent to clarify his relationship with the company 芜湖同驰机电有限公司 (NEW OCEAN TECHNOLOGY.CO., LTD.) by June 17, 2022, and inviting the company 芜湖同驰机电有限公司 (NEW OCEAN TECHNOLOGY.CO., LTD.) to clarify its relationship with the Respondent, and to explain its registration and use of the disputed domain name by June 17, 2022. The Complainant may comment on any submission from the Respondent and/or 芜湖同驰机电有限公司 (NEW OCEAN TECHNOLOGY.CO., LTD.) to the Procedural Order No.1 by June 24, 2022. The Respondent, the company 芜湖同驰机电有限公司 (NEW OCEAN TECHNOLOGY.CO., LTD.), and the Complainant did not reply to the Panel Procedural Order No.1.

4. Factual Background

The Complainant is an United States based company established in 1914 by Mr. Joseph Henry Nook, which developed a product for preventing battery corrosion. The Complainant further began manufacturing and distributing the world’s first Battery Corrosion Preventative product in the automotive industry. The Complainant now owns over two dozen patents in the United States, designs and creates premium consumer battery chargers, jump starters, and batteries, as well as, a wide range of accessories.

The Complainant holds trademark registrations for NOCO mark, such as the following:

- the United States Trademark Registration No. 1302394, filed on December 29, 1982 and registered on October 30, 1984, covering goods in International Classes 6, and 9;
- the European Union Trademark Registration No. 011003563, filed on June 29, 2012 and registered on November 26, 2012, covering goods in International Classes 1, 8, and 9; and
- the Chinese Trademark Registration No. 54653380 registered on October 28, 2021, covering goods in International Class 8.

The Complainant promotes its products on the website available at “www.no.co”.

The disputed domain name <noceev.com> was registered on February 17, 2013 and, according to evidence provided in the Complaint, it is used in connection with a commercial website promoting goods similar to those of the Complainant from different brands, such as battery charges, motor controller & assemblage, etc.

When the Panel visited the website under the disputed domain name, it noticed that on the opening page the Respondent presented itself as “the online selling site of NEW OCEAN TECHNOLOGY CO., LTD., dedicated to the market of electric vehicle parts & electric forklift parts”; the depiction of a photo of an engraved company plate displaying the following information “NOCO® EV & Forklift Parts – 芜湖同驰机电有限公司 NEW OCEAN TECHNOLOGY.CO., LTD. – <http://www.nocev.com/>”; and it further noted that in the “About us” section there was a document in Chinese with the English description “Business Licence (From July 31, 2007)”. 芜湖同驰机电有限公司 (NEW OCEAN TECHNOLOGY.CO., LTD.) owns a Chinese trademark registration No. 6375280 NOCO, registered on March 28, 2010, in International Class 11.

The Complainant sent a demand letter and a follow up one to the Respondent on August 20, 2021 and March 7, 2022, respectively, but no response was received from the Respondent.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its trademark NOCO as it contains such mark together with the letters "ev", an abbreviation for "electric vehicle", the Respondent has no rights or legitimate interests in the disputed domain name, and the Respondent registered and is using the disputed domain name in bad faith. The Complainant requests the transfer of the disputed domain name to it.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions.

On April 1, 2022 the Center received an email communication from the Respondent stating that "...I don't have a clue on what is happening on the domain name nocoev.com which is registered by myself. I hope that my legal right will be well protected".

6. Discussion and Findings

In view of the absence of a formal Response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

A. Identical or Confusingly Similar

The Panel finds that the Complainant holds rights in the NOCO trademark.

The disputed domain name incorporates the trademark NOCO with the two additional letters, "ev". However, such addition does not prevent a finding of confusing similarity as the Complainant's trademark is clearly recognizable within the disputed domain name.

Numerous UDRP panels have considered that where the relevant trademark is recognizable within the domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless or otherwise) to the trademark in a domain name would not prevent a finding of confusing similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0").

Further, it is well established in decisions under the UDRP that the generic Top-Level Domain ("gTLD") (e.g., ".com", ".site", ".info", ".shop") is typically disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name. See section 1.11 of the [WIPO Overview 3.0](#).

Given the above, the Panel finds that the disputed domain name is confusingly similar to the trademark NOCO in which the Complainant has rights, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Complainant asserts that the Respondent does not hold any license, or authorization whatsoever from the Complainant to use its mark NOCO. The Complainant further asserts that the website at the disputed domain name purports to show a Chinese trademark registration No. 6375280 for NOCO, covering goods, *inter alia*, “Light bulbs, Light bulbs, electric, Lamps (Electric -), Lighting apparatus and installations, Ceiling lights, Miners’ lamps, Standard lamps, Street lamps, Lighting apparatus for vehicles”. None of these goods appear to be offered for sale at the website associated with the disputed domain name.

Further, the Complainant asserts that the Respondent is not commonly known by the disputed domain name, and that the Respondent has not used the disputed domain name in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods or services.

Under the Policy, “where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element”. See section 2.1 of the [WIPO Overview 3.0](#).

Paragraph 4(c) of the Policy gives non-exclusive examples of instances in which the respondent may establish rights or legitimate interests in the domain name, by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) that the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent did not mention whether he owns any trademark rights in NOCO in his email communication to the Center dated April 1, 2022. However, the Panel notes that the company listed on the website at the disputed domain name, 芜湖同驰机电有限公司 (NEW OCEAN TECHNOLOGY.CO., LTD.), owns a Chinese trademark registration No. 6375280 for NOCO, registered on March 28, 2010, in International Class 11, and the Respondent’s email address is available on the Contact page. According to the About Us page, 芜湖同驰机电有限公司 (NEW OCEAN TECHNOLOGY.CO., LTD.) provides a wide range of products corresponding each sector of electric vehicle and forklift (such as, motor controller & assemblage, programmer, contactor, accelerator (throttle), meter/gauge), and its major supplying sources come from the well-known brands, Curtis, Albright, GE, Zapi, KDS, SKF, NSK, etc., and “there is an important part of our provision is from the local factories of these manufacturers in China”. The Panel notes the mentioned Chinese trademark is not registered in the name of the Respondent, and there is no explanation on the relationship between the Respondent and the trademark holder. In addition, even assuming that there is a connection between the Respondent and 芜湖同驰机电有限公司 (NEW OCEAN TECHNOLOGY.CO., LTD.), the Panel notes the lack of an explanation on how the Respondent came to the idea of using “NOCO” to distribute products that are similar to those identified by the Complainant’s NOCO trademark (and that were already in the market when the Chinese trademark registration No. 6375280 was registered). It may be argued that “NOCO” is some short of an acronym for NEW OCEAN TECHNOLOGY.CO., LTD., but a logical question arises on why the disputed domain name did not include a “t” for “Technology” (being that a term in the company’s name). Finally, it seems that 芜湖同驰机电有限公司 (NEW OCEAN TECHNOLOGY.CO., LTD.) does not manufacture any products under the NOCO trademark, and its NOCO trademark registration cover goods that are not related to the products it provides on the website.

In all the circumstances, the Panel finds that the above-mentioned trademark registration in China does not give rise to rights or legitimate interests in the disputed domain name for the purposes of the Policy, as all the circumstances lead the Panel to consider that 芜湖同驰机电有限公司 (NEW OCEAN TECHNOLOGY.CO., LTD.) obtained such rights, without any authorisation or approval from the Complainant, probably to prevent the Complainant from exercising its rights, in particular, in China (see section 2.12.2 of the [WIPO Overview 3.0](#)).

Although properly notified with regard to the present procedure, the Respondent failed to submit a substantive Response and to provide any arguments which could demonstrate its rights or legitimate interests in the disputed domain name. He simply claimed that he owns the disputed domain name and that he hopes that his rights will be preserved. Such mere allegations are inadequate and insufficient.

The disputed domain name incorporates the Complainant's trademark known for decades in its industry and it is used to promote various goods similar to those promoted by the Complainant. For these reasons, the Panel believes that the Respondent adopted the term "Noco" in the disputed domain name more likely for the purpose of creating an impression of an association with the Complainant or otherwise for taking unfair advantage of the goodwill of the Complainant's trademark.

Therefore, there has been no evidence adduced to show that the Respondent is using the disputed domain name for a *bona fide* offering of goods or services; there has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name; and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

For these reasons, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, pursuant to the Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The Complainant holds trademark rights for NOCO since around 1984 and carries its activities under the name Noco since 1914.

The disputed domain name was registered in 2013 and incorporates the Complainant's mark together with the term "ev", an abbreviation for "electric vehicle", terms closely related to the Complainant's industry.

From the above, the Panel finds that the Respondent was most likely aware of the Complainant, its business and trademark at the registration of the disputed domain name.

At the time of filing the Complaint, the disputed domain name resolves to a commercial page providing goods similar to those offered by the Complainant from various brand owners.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "to attract, for commercial gain, Internet users to [the respondent's] website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location" is evidence of registration and use in bad faith.

As previously discussed, the Panel finds that, in all the circumstances, the Respondent has most likely registered and used the disputed domain name to create a false impression that the Respondent may be affiliated or connected with the Complainant, for commercial gain.

Although the Respondent received two demand letters from the Complainant before the commencement of this proceeding; he received the Complaint together with the Center's communication inviting him to provide a response to the Complainant's allegations, as well as the Procedural Order No.1 requesting the clarification of his relationship with the owner of the Chinese trademark No. 6375280, the Respondent refused to participate in this proceeding and to provide any arguments for choosing the disputed domain

name. Having in view the other circumstances of this case, such facts constitute further evidence of bad faith behavior.

For all the above reasons, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith, pursuant to the Policy, paragraph 4(a)(iii).

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <nocoev.com> be transferred to the Complainant.

/Marilena Comănescu/

Marilena Comănescu

Sole Panelist

Date: June 27, 2022